

Not for Publication - For Upload

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

ISAAC MARTIN d/b/a)	
Sea World Jet Ski Rentals,)	
)	
Plaintiff,)	
)	
v.)	Civ. No. 2002-162
)	
RITZ CARLTON, INC (V.I. Inc.) d/b/a)	
THE RITZ-CARLTON, ST. THOMAS)	
and ARNOLDO FALCOFF d/b/a PATAGON)	
DIVING,)	
)	
Defendants.)	
_____)	

ATTORNEYS:

Gwendolyn R. Wilds, Esq.
St. Thomas, U.S.V.I.
For the plaintiff,

Frederick G. Watts, Esq.
St. Thomas, U.S.V.I.
For defendant Arnolde Falcoff,

David J. Comeaux, Esq.
St. Thomas, U.S.V.I.
For defendant Ritz-Carlton (Virgin Islands), Inc.

MEMORANDUM

Plaintiff Isaac Martin ["Martin"] moves to amend his complaint. Defendant Ritz-Carlton (Virgin Islands), Inc. ["Ritz-Carlton"] moves to dismiss two of Martin's claims under Fed.R.Civ.P. 12(b)(6) for failure to state a claim for which

relief can be granted. Ritz-Carlton argues that plaintiff's tortious interference and section 1981 claims, which were filed more than three (3) years after the alleged conduct that gave rise to the suit, are barred by the two-year statute of limitations. Defendant Arnoldo Falcoff ["Falcoff"] moves for summary judgment.

I. BACKGROUND

On or about June 31, 1998, the plaintiff contracted with Ritz-Carlton to engage in the business of jet ski rentals. Falcoff provided certain water sports services to Ritz-Carlton and Ritz-Carlton consulted Falcoff on water sports matters. Ritz-Carlton asked Falcoff his views on plaintiff's jet ski operations at Ritz-Carlton. Falcoff expressed concern about unsupervised jet ski operation and rental by underage operators.

On or about May 17, 1999, Ritz-Carlton told the plaintiff to cease operations. Plaintiff filed a small claims action against the Jet Ski Association and Ramon Fuertes. Judgment was entered in plaintiff's favor, and the Appellate Division of the District Court affirmed that decision. While that action was pending, plaintiff sued Falcoff in small claims court. That action, arising out of the same facts that form the basis of plaintiff's

current claim against Falcoff, was dismissed with prejudice.

On August 26, 2002, the plaintiff filed this action against Ritz-Carlton and Falcoff, setting forth claims for tortious interference with contractual relations and under the Federal Civil Rights Act, 42 U.S.C. § 1981. The plaintiff has twice moved to amend his complaint. Neither proposed amended complaint names Falcoff as a defendant. By amending his complaint against Ritz-Carlton, plaintiff would (1) drop his tortious interference claim, (2) retain the section 1981 claim, and (3) add claims for breach of contract and breach of the implied covenant of good faith and fair dealing.

II. DISCUSSION

I will grant Falcoff's motion for summary judgment on the grounds that the claims against Falcoff have already been adjudicated in his favor and are otherwise time-barred. Martin effectively has acknowledged that he has no cause of action against Falcoff by omitting him from the proposed amended complaints. I will rule on Falcoff's motion for an award of costs and attorneys fees, filed on December 24, 2002, after Martin has had the opportunity to respond within the time permitted by the rules.

I will partially grant the plaintiff's motion to amend his complaint to the extent that the proposed second amended complaint omits Falcoff as a defendant and, regarding Ritz-Carlton: (1) omits the claim of tortious interference with contractual relations; (2) adds two additional counts alleging breach of contract and breach of the implied covenant of good faith and fair dealing; and (3) corrects errors in the previously-filed amended complaint.

I will deny the motion to the extent that the proposed second amended complaint would retain the count alleging violation of 42 U.S.C. § 1981 against Ritz-Carlton. When addressing section 1981 claims, federal courts borrow the statute of limitations that applies to personal injury claims in the state or territory. *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 660-64 (1987) (holding that all section 1981 claims are subject to the state's personal injury statute of limitations).¹ The local statute of limitations for personal injury claims is two years. 5 V.I.C. § 31(A). Accordingly, plaintiff's section 1981 claim is subject to a two-year statute of limitations and is barred because it was initially filed on August 26, 2002, some

¹ But see *Lydia Brown v. Vitelcom, Inc.*, 47 F. Supp. 2d. 595, 604 (1999) (erroneously holding that the statute of limitations for section 1981 claims in the Virgin Islands is six years).

three and a half years after it arose on May 17, 1999. Since this grants the same relief sought by Ritz-Carlton, I will deny Ritz-Carlton's motion to dismiss as moot.

ENTERED this 30th day of December, 2002.

FOR THE COURT:

Thomas K. Moore
District Judge

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

Copies to:
Honorable Geoffrey W. Barnard
Gwendolyn R. Wilds, Esq.
St. Thomas, U.S.V.I.
Frederick G. Watts, Esq.
St. Thomas, U.S.V.I.
David J. Comeaux, Esq.
St. Thomas, U.S.V.I.
Mrs. Jackson
Joshua R. Geller, Esq.

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For defendant Arnolde Falcoff,

David J. Comeaux, Esq.
St. Thomas, U.S.V.I.
For defendant Ritz-Carlton (Virgin Islands), Inc.

ORDER

For the reasons enumerated in the foregoing memorandum of
even date, it is hereby

ORDERED that defendant Falcoff's motion for summary judgment
[docket #26] is **GRANTED**. It is further

ORDERED that plaintiff's first motion for leave to amend his complaint [docket #17] is **DENIED** as **MOOT**. It is further

ORDERED that plaintiff's second motion for leave to amend his complaint [docket #22] is **GRANTED IN PART**. It is further

ORDERED that defendant Ritz-Carlton's motion to dismiss plaintiff's tortious interference claim and section 1981 claim, [docket #32] is **DENIED** as **MOOT**.

ENTERED this 30th day of December, 2002.

FOR THE COURT:

Thomas K. Moore
District Judge

ATTEST:
WILFREDO F. MORALES
Clerk of the Court

By: _____
Deputy Clerk

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